

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Bart Shahan,

Petitioner,

v.

Case No. 2:08-cv-252

Clifford Smith, Warden,

Judge Michael H. Watson

Respondent.

ORDER

On July 16, 2009, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254 be dismissed. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*.

On July 1, 2004, petitioner Bart Shahan pleaded guilty to three counts of rape. On August 27, 2004, he was classified as a sexual predator and sentenced to an aggregate term of 21 years incarceration. He did not timely appeal the sentence; however, on February 3, 2005, he filed a motion for delayed appeal, which was denied. His motion for delayed appeal of that decision to the Supreme Court of Ohio was also denied. After exhausting his Ohio court remedies, Shahan filed a federal habeas corpus petition. *Shahan v. Jeffries*, Case No. 2:06-cv-160. On May 14, 2007, this Court granted the petition on the ground that his sentence violated *Blakely v. Washington*, 542 U.S. 296 (2004). The trial court then re-sentenced Shahan to an aggregate term of twenty-one

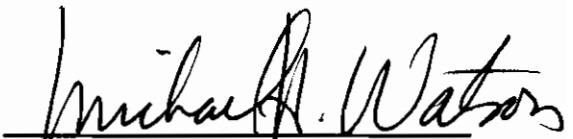
years incarceration. The Magistrate Judge recommended that the petition be denied because Shahan's sentence on re-sentencing did not violate *Blakely*.

Petitioner objects to the Magistrate Judge's recommendation of dismissal of his claim on the merits. Petitioner again argues that the Ohio Supreme Court in *State v. Foster*, 109 Ohio St.3d 1 (2006), unconstitutionally excised fact-finding provisions of Ohio's sentencing statutes, and asserts that his sentence therefore violates the Ex Post Facto Clause. As the Report and Recommendation states, that claim has been rejected by all the courts that have considered it. See, *Pitts v. Warden*, 2008 WL 4758697 (N.D. Ohio October 29, 2008); *Hooks v. Sheets*, 2008 WL 4533693 (S.D. Ohio October 3, 2008); *Allen v. Hudson*, 2009 WL

1212473 (N.D. Ohio June 10, 2009); *Woody v. Welch*, 2009 WL 1440828 (N.D. Ohio May 20, 2009); *Allen v. Hudson*, 2009 WL 1649312 (N.D. Ohio June 10, 2009); *Smith v. Wilson*, 2008 WL 4758696 (N.D. Ohio October 29, 2008); *McKittrick v. Smith*, 2009 WL 1067321 *9 n.4 (N.D. Ohio April 21, 2009).

Pursuant to 28 U.S.C. 636(b), this Court has conducted a de novo review. For the reasons detailed in the Magistrate Judge's Report and Recommendation, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

IT IS SO ORDERED.


Michael H. Watson, Judge
United States District Court